MEMORANDUM OPINION
(Bench Opinion)

April 25, 2006

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

IN RE:	:	
	:	
LINDA FAYE CARTER	:	Case No. 05-31128
d/b/a ALPINE HIDEAWAY RV	:	Chapter 7
	:	
Debtor	:	

BEFORE THE HONORABLE RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR THE DEBTOR:

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458 Troy Drive
Pigeon Forge, Tennessee 37863

FOR WILLIAM T. HENDON, TRUSTEE:

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Post Office Box 50034
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FOR INDYMAC BANK, FSB:

TIMOTHY F. FROST, ESQ.
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APPEARANCES (Continued):

FOR JOSEPH AND BOBBIE KING:

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FOR THE UNITED STATES TRUSTEE:

PATRICIA C. FOSTER, ESQ.
BECKY H. HALSEY, ESQ.
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FOR MICHAEL CARTER MORE PERFECT WORLD CHURCH MINISTRIES:

Michael Carter, *Pro Se*
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THE COURT: There are three motions that I have before me this afternoon, all of which were filed yesterday, that were noticed for hearing orally by the courtroom deputy late yesterday and we were able to get everyone here and I have endeavored to give all parties an opportunity to speak their piece. They are, to a large extent, legal issues rather than fact specific and, for that reason, I do have a record and take judicial notice of all matters that are of record in the Debtor's case file pursuant to Rule 201 of the Federal Rules of Evidence.

I am going to deal with the Motion to Reconsider Order to Convert This Case From Chapter 11 to Chapter 7 filed by the Debtor, Ms. Carter, separately, and then I will deal with the two emergency motions to stay the Thursday sale of the real estate.

The Motion to Reconsider, which is what I will refer to it as, as I have indicated, was filed by Ms. Carter, pro se. I have excused on my own motion her attorney, John Fowler, from further representation based not upon matters that were stated in the Motion to Reconsider but that were set forth in the ex parte emergency motion she filed. I find those matters to be considerably derogatory and, to a great extent, defamatory and I determined that Mr. Fowler could not continue to represent Ms. Carter given the context and language of those motions.

There is, in fact, no such motion known as "motion to reconsider" under the Federal Rules of Civil Procedure or Federal Rules of Bankruptcy Procedure. Instead, a motion to reconsider will be deemed by the court to be a motion to alter or amend a judgment filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, made applicable to bankruptcy cases pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure. *See Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982). Pursuant to Rule 59(e), a motion to alter or amend judgment "shall be filed no later than 10 days after entry of the judgment."

As I said, all facts essential to the disposition of the Motion to Reconsider are of record and I have taken judicial notice of the same. These facts are as follows. The Debtor filed the Voluntary Petition commencing her bankruptcy case under Chapter 11 on March 1, 2005. On August 18, 2005, the United States Trustee filed a Motion of United States Trustee to Dismiss or Convert. On the same date, two of the Debtor's secured creditors, Joseph D. King and Bobbie Rae King, filed a Motion by Joseph D. King and Bobbie Ray King to Convert to Chapter 7, Dismiss, or Appoint a Trustee. By these motions, both the United States Trustee and Mr. and Ms. King sought an order converting the Debtor's Chapter 11 case to Chapter 7. As alternative relief, Mr. and Ms. King sought dismissal or, if the court determined that the case would remain in Chapter 11, the appointment of a Chapter 11 trustee.

I conducted an evidentiary hearing on these motions on October 4, 2005, together with an automatic stay motion filed by Mr. and Ms. King shortly after the bankruptcy case was filed. I believe the automatic stay motion was filed on March 10, 2005. It is not a subject of the current motion, except peripherally, so I will not address it further. At any rate, at the October 4, 2005 hearing on the conversion/dismissal motions, Ms. Carter was represented by her attorney, Mr. Fowler, and I heard testimony from Ms. Carter and twelve exhibits were introduced into evidence. I considered the arguments of counsel. At the close of the evidence, I dictated a memorandum opinion from the bench containing findings of fact and conclusions of law and granted the United States Trustee and King motions to the extent conversion to Chapter 7 was requested.

On October 5, 2005, I entered an order converting the Debtor's Chapter 11 case to Chapter 7. Thereafter, I believe it was on October 5, 2005, William T. Hendon was appointed trustee of the Chapter 7 estate. A creditors' meeting was noticed for

hearing pursuant to Section 341(a) of the Bankruptcy Code for November 8, 2005. That meeting was rescheduled two or three times and was finally held on December 1, 2005. Mr. Hendon has continued to administer the estate and on February 10, 2006, Ms. Carter, the Debtor, was granted her discharge pursuant to 11 U.S.C. § 727.

On April 24, 2006, yesterday, some five and a half months after the October 5, 2005 Order was entered converting the Chapter 11 case to Chapter 7, Ms. Carter filed the present Motion to Reconsider requesting, in effect, that the October 5, 2005 Conversion Order be vacated and that she be allowed to proceed under Chapter 11. Orders converting a case from Chapter 11 to Chapter 7 are final orders that are "immediately appealable." *Fraidlin v. Weitzman (In re Fraidlin)*, No. 95-2922, 1997 U.S. App. LEXIS 6265, at *4 (4th Cir. Apr. 3, 1997); *see also Kershaw v. Behm*, 819 F.2d 1142 (6th Cir.1987); and *Chu v. Syntron Bioresearch, Inc. (In re Chu)*, 253 B.R. 92, 93 (S.D. Cal. 2000); *Halvajian v. The Bank of New York (In re Halvajian)*, 216 B.R. 502, 509-510 (D.N.J. 1998) (with analysis of differences between liquidation and reorganization).

Under Rule 8002(a) of the Federal Rules of Bankruptcy Procedure, the appeal of the October 5, 2005 Order converting the Debtor's case from Chapter 11 to Chapter 7 required the filing of a notice of appeal within ten days, that is, by October 15, 2005. Because that day fell on a Saturday, the appeal time would have been extended to October 17, 2005, provided, however, that under Rule 8002(b) a motion to alter or amend the judgment filed within the ten-day appeal time would have tolled the running of the appeal time until disposition of the motion to alter or amend. Such a motion was not filed until the Debtor filed the Motion to Reconsider on April 24, 2006.

Here, as I have noted, the time for filing a notice of appeal of the October 5,

2005 Order converting the case to Chapter 7 expired, at the latest, on October 17, 2005. The Motion to Reconsider filed on April 24, 2006, is clearly untimely and will be denied.

This Memorandum constitutes findings of fact and conclusions of law as required by FED. R. CIV. P. 52(a). I will not ask the court reporter to transcribe my opinion. If it is transcribed, an original only will be prepared and delivered to me for such additions and corrections as I deem appropriate. An order commensurate with my opinion will be entered in due course.

FILED: May 22, 2006

/s/ *RICHARD STAIR, JR.*
RICHARD STAIR, JR.
U.S. BANKRUPTCY JUDGE